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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Rules and Policies on Foreign Participation  
in the U.S. Telecommunications Market

IB Docket No. 97-142

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby responds to the Federal Communications Commission (Commission) Notice of Proposed Rulemaking (Notice)<sup>1</sup> in the above-captioned proceeding.

**I. INTRODUCTION**

With the successful conclusion of the WTO Negotiations on Basic Telecommunications Services, the United States has now undertaken an international legal obligation to open its telecommunications market to foreign carriers from WTO countries.<sup>2</sup> The U.S. commitments served as a catalyst that encouraged most major U.S. trading partners to make commitments to open their markets to U.S. affiliated carriers. The Commission's Notice proposes a framework for implementing these commitments in the United States, and its example will be closely scrutinized by other nations. The Commission's model for implementation will be influential in ensuring that the WTO Agreement fulfills its promise as the impetus for increased liberalization of telecommunications markets worldwide.

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<sup>1</sup> Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Notice of Proposed Rulemaking, IB Docket No. 97-142, (rel. June 4, 1997)(Notice).

<sup>2</sup> World Trade Organization Basic Telecommunications Agreement, Feb. 15, 1997 (WTO Agreement).

For the Commission  
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While the conclusion of the WTO Agreement is a significant step forward in the liberalization process, its full benefits will not be realized instantaneously or uniformly around the world. Foreign carriers with market power in their home markets therefore could still produce serious competitive distortion in the U.S. international services market. To address this and other concerns that will prevail in the post-WTO environment, MCI recommends that the Commission take the following actions:

1. Condition international services authorizations for carriers from all countries on the achievement of settlement rates at the low end of its proposed benchmark range;
2. In addition, with respect to carriers from WTO countries:
  - Impose the proposed reporting and record keeping requirements on U.S. carriers whose foreign affiliates have market power but operate in home markets where international facilities-based competition is permitted by law, and facilities-based competitors exist; and
  - Impose the "no special concessions rules" and the more significant requirements proposed by the Notice on those carriers with characteristics that would trigger "supplemental dominance" treatment; and
3. Maintain existing rules with respect to non-WTO countries and carriers.

As discussed below, these actions would further the Commission's goals in a manner that is consistent with the WTO Agreement.

## **II. INTERNATIONAL SERVICES AUTHORIZATIONS SHOULD BE CONDITIONED ON THE ACHIEVEMENT OF SETTLEMENT RATES AT THE LOW END OF THE BENCHMARK RANGE**

Although the WTO Agreement is a significant step forward, it will take time for vigorous competition to develop where it does not currently exist, even in countries that have made far-reaching liberalization commitments. Moreover, a number of key U.S. trading partners made commitments that phase in after the WTO Agreement's effective date of January 1, 1998. Other

WTO countries have failed altogether to make significant commitments.

Unquestionably, the introduction of vigorous competition in the home markets of foreign carriers is the surest way to safeguard competition in the U.S. market. Because that goal has not yet been met, MCI continues to support conditioning U.S. international services authorizations on the achievement of settlement rates that fall within the low end of the Commission's benchmarks, especially to address competitive distortion from international simple resale (ISR) and other potential forms of in-bound bypass. In addition to limiting the potential for competitive distortion, such a condition would create a transparent standard consistent with U.S. obligations under the WTO Agreement and the Commission's commitment to move settlement rates toward cost-based levels.

### **III. ADDITIONAL SAFEGUARDS AND REPORTING REQUIREMENTS WILL HELP LIMIT COMPETITIVE DISTORTION IN THE U.S. MARKET**

Instead of conditioning authorizations on settlement rates approaching cost, the Commission has proposed to use the achievement of settlement rates at benchmark levels, which are significantly higher than cost. The achievement of benchmark settlement rates would be a step in the right direction. Absent real opportunities for U.S. carriers to compete in foreign markets, however, carriers with unconstrained market power that participate in the U.S. market at the high end of the proposed benchmark ranges could distort competition in the U.S. international services market.<sup>3</sup> Such anti-competitive behavior would act to the competitive disadvantage of other U.S. carriers, and the ultimate detriment of U.S. consumers. Therefore,

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<sup>3</sup> The most serious example of such distortion would involve inbound by-pass of the accounting rate system. See MCI Comments at 10-11, IB Docket No. 96-261 (filed Feb. 7, 1997).

MCI supports the underlying premise of the Commission's proposed framework, which would impose additional conditions or requirements on U.S. carriers based upon the market power of the foreign carriers with which they are affiliated or have dealings.<sup>4</sup>

The Commission proposes to classify foreign affiliated carriers in effectively three categories, based on market power, for purposes of applying competitive safeguards in connection with Section 214 applications and foreign ownership. An applicant would fall into the first category (referred to herein as Category I) if it has no foreign affiliation or if its foreign affiliate has no market power on the relevant route, and no new competitive safeguards would apply. An applicant would be classified in the "basic dominance" category (referred to herein as Category II), and additional requirements would apply, if its foreign carrier affiliate has market power but de jure barriers to facilities-based competition have been removed and the foreign carrier faces international facilities-based competition. A U.S. carrier would fall into the so-called "supplemental dominance" category (referred to herein as Category III) if it is affiliated with a foreign carrier with market power which does not face international facilities-based competition in its home market. In this instance, strict requirements would be imposed.

The Commission also proposes to modify its "no special concessions rules" to apply only where U.S. carriers are dealing with foreign carriers with market power.<sup>5</sup> The Commission

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<sup>4</sup> Notice at para. 84.

<sup>5</sup> Notice at para. 115. Specifically, the Commission proposes to prohibit any U.S. carrier from agreeing to accept from a foreign carrier with market power in the destination country an exclusive arrangement that affects traffic or revenue flows to or from the U.S., not offered to similarly situated U.S. carriers, that involves: (1) operating agreements for the provision of basic services; (2) distribution or interconnection arrangements, including pricing, technical, functional or other quality characteristics; (3) any information, prior to public disclosure, about a foreign carrier's basic network services that affects provision of basic or

asks for recommendations regarding a “bright line” test to determine when market power concerns would require the imposition of these requirements.<sup>6</sup>

The Commission’s basic framework is sound and provides a workable basis for implementing the WTO Agreement. The proposal would open the U.S. market to all foreign entrants while maintaining safeguards or conditions where necessary to address specific market power concerns that increase the risks of competitive distortion in the U.S. international services market. As discussed below, MCI believes that strict conditions and requirements should be reserved for carriers that are affiliated or deal with those carriers that pose the greatest threat of competitive distortion in the U.S. international services market -- foreign carriers that do not face competition in their home markets. MCI also believes that it would be appropriate to apply these requirements, based on the proposed categorization, subject to a strong presumption that could be rebutted only by a clear demonstration that competitive distortion in the U.S. market would not occur.

**A. REPORTING AND RECORD KEEPING REQUIREMENTS ARE SUFFICIENT WHEN FACILITIES-BASED COMPETITION EXISTS**

The Commission proposes to establish a “middle tier” of carriers affiliated with foreign carriers that have market power but whose home markets are open to competition. The Commission proposes to subject Category II carriers to certain reporting and recordkeeping

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enhanced services or interconnection to the foreign country’s domestic network by U.S. carriers or their customers; (4) any proprietary or confidential information obtained by the foreign carrier from competing U.S. carriers in the course of regular business dealings with such U.S. carriers, absent written permission from the U.S. carrier involved; and (5) the joint handling of basic U.S. traffic originating or terminating in third countries. *Id.* at para. 117.

<sup>6</sup> *Id.* at para. 116.

requirements.<sup>7</sup> MCI believes this is a constructive approach.<sup>8</sup>

When the WTO Agreement and the Commission's new rules first become effective, many foreign carriers are likely to retain some measure of market power. If the Commission were to subject such a potentially broad category of carriers to stringent conditions on authorizations, the international consensus that allowed the successful conclusion of the WTO Agreement could well be undermined, and U.S. carriers could be subjected to debilitating retaliatory regulation overseas. Stringent conditions on authorizations would also presuppose that foreign countries will fail to fulfill their commitments under the WTO Agreement. Among the most important of these is the WTO Reference Paper, which requires the implementation of regulations and controls designed to protect against misuse of market power. It is also the case that carriers from countries that have removed legal restrictions on competition, and in which actual international facilities-based competition is developing, present a reduced threat of distorting competition than carriers from countries that maintain barriers to competition.

For similar reasons, the Commission should decline to impose "no special concessions" requirements on U.S. carriers dealing with foreign carriers that face facilities-based competition. Imposing substantial restrictions on dealings with a large proportion of carriers from WTO

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<sup>7</sup> Id. at paras. 95-103. The Commission proposes that foreign affiliated U.S. carriers regulated as basic dominant must: (1) notify the Commission, on a quarterly basis, of the addition of circuits on the dominant route; (2) provide the Commission with quarterly reports of traffic and revenue on the dominant route; and (3) maintain provisioning and maintenance records that are available for review by the Commission upon request. See also Id. at paras. 92-94. The Commission also proposes to permit foreign affiliated U.S. carriers regulated as basic dominant to file tariffs for international services on one day's notice and to apply a presumption of lawfulness to such tariffs.

<sup>8</sup> It is critical that any reporting requirements imposed as a result of this Notice be enforced uniformly if they are to constitute an effective monitoring tool.

countries would unnecessarily inhibit implementation of open trading principles. In addition, where there are multiple carriers in a foreign market, a broad and stringent "no special concessions" prohibition could act to standardize all arrangements in a way that would inhibit the development of new services, especially in the market for large customers with extensive multinational requirements.

Moreover, even without imposing stringent safeguards on Category II carriers or dealings with such carriers, the Commission will continue to have the authority to take steps to address competition problems if and as they arise. To augment its ability to redress competitive distortion quickly, the Commission should consider establishing an expedited complaint procedure to address and resolve complaints regarding distortion of competition by foreign-affiliated carriers.<sup>9</sup> Such a mechanism would be a constructive step, and one that avoids the negative repercussions of applying stringent conditions on the authorizations of a broad category of applicants.

**B. ADDITIONAL SAFEGUARDS SHOULD APPLY WHEN FOREIGN CARRIERS DO NOT FACE FACILITIES-BASED COMPETITION**

The Commission proposes to create a third category of carriers -- U.S. affiliates of foreign carriers operating as international facilities-based monopolies in their home markets. The Commission has proposed to adopt additional, more stringent safeguards for this category, including restrictions on the use of customer information and prohibitions on exclusive co-

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<sup>9</sup> Among the sanctions that the Commission could impose upon a demonstration of competitive distortion would be the movement of a carrier from Category II to Category III.

marketing and steering of customers for basic services.<sup>10</sup> Approval would also be required prior to adding circuits on the route and additional reporting requirements would be imposed.<sup>11</sup>

MCI agrees that when no meaningful ability to compete exists, abuse of monopoly power is such a significant risk that the Commission should apply more stringent safeguards, despite the commitments of the WTO and other public interest factors.

For similar reasons, MCI recommends that "no special concessions" rules apply only with respect to dealings with foreign carriers that raise Category III concerns -- i.e., carriers which do not face competition from facilities-based carriers. The Commission should utilize this standard as its "bright line test."

The Commission created the "no special concessions" rule to address the competitive dangers of a world in which virtually all foreign telecommunications markets were dominated by de jure monopoly carriers. In such circumstances, a prohibition on exclusive or preferential arrangements between U.S. carriers and foreign carriers was necessary to prevent a particular foreign carrier from discriminating in ways that would harm competing U.S. carriers. The competitive risks presented by these arrangements between U.S. carriers and foreign carriers that

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<sup>10</sup> Id. at para. 104. The Commission proposes to prohibit foreign affiliated U.S. carriers subject to supplemental dominance regulation from entering into exclusive arrangements with the affiliated foreign carrier for: (1) the joint marketing of basic telecommunications services; (2) the steering of customers by the foreign carrier to the U.S. carrier; or (3) the use of foreign market customer information, including names and addresses.

<sup>11</sup> Id. at paras. 107-108. The Commission proposes to require U.S. carriers subject to supplemental dominance to: (1) obtain prior approval to add circuits to an affiliated route; (2) file and make publicly available quarterly circuit status reports for facilities-based circuits and resold private lines; and (3) make available an electronic summary of contracts filed pursuant to Section 43.51 of the Commission's rules, and to identify amendments made by those contracts to other agreements.



hold a monopoly are so significant that "no special concessions" requirements should continue to be imposed in such situations.<sup>12</sup>

**V. EXISTING RULES SHOULD CONTINUE TO APPLY TO NON-WTO COUNTRIES AND CARRIERS**

The Commission proposes to continue to apply its existing rules to any carrier whose home market country is not a member of the WTO. MCI believes that for countries that have not agreed to open markets on a multilateral basis, the effective competitive opportunities (ECO) test and the equivalency test for ISR best satisfy the Commission's objectives of encouraging foreign countries to open their markets to competition and limiting competitive distortion in the U.S. international services market. Therefore, with respect to non-WTO countries, MCI fully supports continuation of the regulatory regime currently in effect.

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<sup>12</sup> The Commission also asks whether there are any circumstances in which structural separation should be imposed. To date, the Commission has granted facilities-based licenses to several foreign carriers without imposing such restrictions. MCI does not see any reason to depart from this practice at this time, at least with respect to carriers that would fall into Category II.

## VI. CONCLUSION

In light of the multilateral commitments under the WTO and the leadership role of the United States in facilitating those commitments, MCI supports the implementation of liberalized entry rules for carriers from WTO countries, conditioned upon settlement rates on the relevant route meeting the low end of the benchmark range and the imposition of additional conditions when necessary. However, the Commission should at all times recognize the importance of setting an example for liberalization that can and should be adopted by all members of the WTO. Therefore, it should impose most of its proposed conditions, including the supplemental dominance safeguards and "no special concessions rules," only in those circumstances that pose the greatest risk of competitive distortion -- those involving legal monopolies or carriers not facing facilities-based competitors. For carriers that are not members of the WTO, the current rules should continue to apply.

Respectfully submitted,

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July 9, 1997

## CERTIFICATE OF SERVICE

I, Damion S. Hutchins, do hereby certify that a copy of the foregoing Comments of MCI Telecommunications Corporation was hand delivered or sent by first class United States mail, postage paid on this 9th day of July, 1997 to the following:

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